

AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 815**

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**Introduced by Assembly Member Ma**

February 26, 2009

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An act to amend Section 1104 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 815, as amended, Ma. Public contracts: ~~plans and specifications; bidding procedures~~: legislative intent.

Existing law contains various provisions relating to the bidding process for public works projects. Existing law prohibits a local public entity, charter city, or charter county from requiring a bidder to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except on clearly designated design-build projects.

This bill would *declare the intent of the Legislature to consider enacting subsequent legislation to address the issues raised in a specified case being reviewed by the California Supreme Court, as needed, once those issues are ripe for consideration after the Supreme Court has rendered a decision interpreting the parties' rights and obligations under existing law with regard to public contracts disputes* ~~require a local public entity, charter city, or charter county, before entering into any contract for a project, to provide full, complete, and accurate plans and specifications and estimates of cost, giving such direction as will enable any competent mechanic or other builder to carry them out. The bill would exempt from these provisions any clearly identified design-build projects or design-build portions thereof. The~~

~~bill would specify that a local public entity, charter city, or charter county would not be required to provide bidders with plans and specifications for projects that are completed entirely through an annual contract for repair, remodeling, or other repetitive work according to unit prices.~~

~~This bill would further provide that these provisions shall not be construed to require a contractor to prove an affirmative or intentional misrepresentation or active concealment on the part of the public entity, charter city, or charter county that provides the plans and specifications; nor construed to prohibit the public entity, charter city, or charter county from raising any affirmative defenses available to it under law. The bill would also specify that these provisions would not expand, restrict, or otherwise change the liability or potential liability of a design professional, as defined.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. It is the intent of the Legislature to consider*  
2     *enacting subsequent legislation to address the issues raised in Los*  
3     *Angeles Unified School District v. Great American Ins. Co. (2008)*  
4     *163 Cal.App.4th 944, review granted, 193 P.3d 280; 84 Cal.Rptr.3d*  
5     *35 (2008), as needed, once those issues are ripe for consideration*  
6     *after the California Supreme Court has rendered a decision*  
7     *interpreting the parties' rights and obligations under existing law.*  
8     SECTION 1. Section 1104 of the Public Contract Code is  
9     amended to read:  
10    1104. (a) No local public entity, charter city, or charter county  
11    shall require a bidder to assume responsibility for the completeness  
12    and accuracy of architectural or engineering plans and  
13    specifications on public works projects, except on clearly  
14    designated design build projects. Nothing in this section shall be  
15    construed to prohibit a local public entity, charter city, or charter  
16    county from requiring a bidder to review architectural or  
17    engineering plans and specifications prior to submission of a bid,  
18    and report any errors and omissions noted by the contractor to the  
19    architect or owner. The review by the contractor shall be confined  
20    to the contractor's capacity as a contractor, and not as a licensed  
21    design professional.

1 (b) Except for clearly identified design-build projects or  
2 design-build portions thereof, before entering into any contract for  
3 a project, a local public entity, charter city, or charter county shall  
4 provide full, complete, and accurate plans and specifications and  
5 estimates of cost, giving such direction as will enable any  
6 competent mechanic or other builder to carry them out.

7 (c) This section shall not be construed to require a local public  
8 entity, charter city, or charter county, for projects that are  
9 completed entirely through an annual contract for repair,  
10 remodeling, or other repetitive work according to unit prices, to  
11 provide bidders with plans and specifications. If a local public  
12 entity, charter city, or charter county utilizing this type of contract  
13 provides bidders with plans and specifications, the plans and  
14 specifications shall comply with subdivision (b) of this section.

15 (d) (1) Nothing in this section shall be construed to require a  
16 contractor to prove an affirmative or intentional misrepresentation  
17 or active concealment on the part of the local public entity, charter  
18 city, or charter county that provides the plans and specifications.

19 (2) Nothing in this section shall be construed to prohibit a local  
20 public entity, charter city, or charter county from raising any  
21 affirmative defenses available to it under law.

22 (3) Nothing contained in this section shall expand, restrict, or  
23 otherwise change the liability or potential liability of a design  
24 professional, as defined in paragraph (2) of subdivision (b) of  
25 Section 2782.8 of the Civil Code.